

Message

From: Goldmann, Elizabeth [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=2BF5B6F833EA46CCA6ABE2BB68961167-EGOLDM02]
Sent: 3/22/2017 4:13:16 PM
To: Brush, Jason [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=ade1a32824404ed5a333dcd77f2dfc4a-JBRUSH]
Subject: RE: Questions for meeting with SPD - 401 and mitigation

Yes, I recall we put one together too.

From: Brush, Jason
Sent: Wednesday, March 22, 2017 9:13 AM
To: Goldmann, Elizabeth <Goldmann.Elizabeth@epa.gov>
Subject: FW: Questions for meeting with SPD - 401 and mitigation

Thanks — **Deliberative Process / Ex. 5**

Deliberative Process / Ex. 5

From: Goldmann, Elizabeth
Sent: Wednesday, March 22, 2017 9:10 AM
To: Brush, Jason <Brush.Jason@epa.gov>
Subject: RE: Questions for meeting with SPD - 401 and mitigation

I will look in the record to see if we received a letter from Hudbay. Will compile bullet list of key dates.

From: Brush, Jason
Sent: Tuesday, March 21, 2017 7:13 PM
To: Goldmann, Elizabeth <Goldmann.Elizabeth@epa.gov>
Cc: Amato, Paul <Amato.Paul@epa.gov>
Subject: Re: Questions for meeting with SPD - 401 and mitigation

Thanks. **Deliberative Process / Ex. 5**

Deliberative Process / Ex. 5

On Mar 21, 2017, at 4:22 PM, Goldmann, Elizabeth <Goldmann.Elizabeth@epa.gov> wrote:

In a phone discussion between Tom Cavanaugh and Rob Leidy on March 7th, Tom Cavanaugh informed Rob Leidy the purpose of the March 10th meeting **Deliberative Process / Ex. 5**

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

Mitigation – The LA District determined the mine would result in significant degradation to waters of the U.S. and concluded the mitigation was not compensatory. In addition, the LA District concluded the proposed mitigation is not only inadequate but the proposal at Sonoita Creek Ranch has high risk and uncertainty and therefore the chance of success is low.

Deliberative Process / Ex. 5

401 Water Quality – In a letter to the Corps on April 14, 2015, EPA made a determination that the impacts of the project include substantial water quality aspects which may be outside the scope of the state's 401 certification review. These aspects must be considered in determining compliance with the Guidelines. In *Mingo Logan v. EPA*, the court ruled that under 401, *the CWA has identified state requirements as a floor that must be met, not a limit on federal authority* (2014). ADEQ acknowledged that issues by EPA raised on the draft certification are outside the scope of what ADEQ is legally authorized to consider under AZ state law (letter to EPA dated June 12, 2015). While ADEQ stated they share EPA's concerns about potential impacts to water resources, they believe the requirements of the certification, coupled with the APP and the 402 general permit will ensure protection of the OAW. EPA does not concur with this assessment.

Based on our analysis of the proposed project, if constructed, Tier 3 antidegradation standards will be violated. Our determination is based on the following considerations:

- Change in ambient concentrations predicted at the appropriate critical flow condition(s);
- Change in pollutant loadings;
- Reduction in available assimilative capacity;
- Nature, persistence and potential effects; and
- Potential for cumulative effects.

The State's Certification relies on a requirement for Hudbay to develop a Surface Water Mitigation Plan. The plan lacks detailed measures demonstrating Hudbay's ability to arrest and reverse the heavy metal contamination in stormwater which will degrade the downstream OAW.

Lastly, , Section 131.12(a)(1) of the antidegradation policy is not satisfied with regard to fills in wetlands or other waters if the discharge result in "significant degradation" to the aquatic ecosystem as defined under Section 230.10(c) of the Guidelines.

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